

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office June 27, 2008, claims 1-3, 6 and 9-15 were rejected under 35 U.S.C. 102(a) as being anticipated by Lee et al. (US Published Patent No. 2003/0123680); claims 4, 7, 8, 18 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al.; and claims 5 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of McGregor et al. (US Patent No. 4,052,720). Accordingly, Applicant respectfully provides the following:

CLAIM REJECTIONS UNDER 35 U.S.C. § 102 & § 103

Independent claims 1, 11 and 18 were rejected under 35 U.S.C. § 102(a) as being anticipated by Lee. M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. “To anticipate a claim, the reference must teach every element of the claim.” M.P.E.P. § 2131 states further,

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... “The identical invention must be shown in as complete detail as is contained in the...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits Lee does not teach every element of the claim set as provided herein. Accordingly, Applicant respectfully traverses this rejection.

In particular, Independent claims 1, 11 and 18 recite, “creating a predetermined temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient

noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun....” Lee fails to teach this aspect of the claimed invention.

The Examiner has rejected claims 2-4 and 6-10, which each depend from claim 1, 12-16, which each depend from claim 11, and 19, which depends from claim 18, under 35 U.S.C. § 102(a) as being anticipated by Lee. By virtue of their dependence from claims 1, 11 and 18, respectively, claims 2-4, 6-10, 12-16 and 19 require, among other things, “creating a predetermined temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun.” However, the Examiner has not established the Lee teaches this limitation in combination with the other limitations of claims 2-4, 6-10, 12-16 and 19. Thus Lee fails to include every element of the rejected claims. Applicant thus respectfully requests that the rejection of dependent claims 2-4, 6-10, 12-16 and 19 be withdrawn.

The Examiner has rejected claim 5, which depends from claim 1, and claim 17, which depends from claim 11, under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of McGregor. By virtue of their dependence from claims 1 and 11, respectively, claims 5 and 17 require, among other things, “creating a predetermined temporal ambient noise map, said temporal ambient noise map comprising a plurality of average ambient noise values corresponding to a plurality of discrete time periods, said noise values being collected before audio output adjustment operation is begun.” However, the Examiner has not established that Lee or McGregor, either alone or in combination with each other, teach or suggest this limitation in combination with the other limitations of claims 5 and 17. Thus, even if the purported

teachings of Lee are combined with Albrecht in the allegedly obvious fashion advanced by the Examiner, the resulting combination nonetheless fails to include every element of the rejected claims. Applicant thus respectfully requests that the rejection of dependent claims 5 and 17 be withdrawn.

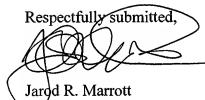
For at least this reason, Applicant respectfully submits that the prior art references do not, independently or in combination, explicitly or impliedly teach every aspect of the invention as claimed in the independent base claims. In addition, the dependent claims place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited art does not teach every aspect of the claims as provided herein and therefore neither anticipates nor renders obvious the claims as provided herein.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this the 23 day of December, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jarod R. Marrott', is written over the text 'Respectfully submitted,'.

Jarod R. Marrott
Attorney for Applicant
Registration No. 54,294

KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 321-4814
Facsimile: (801) 321-4893

JRM:brc
1081382